

Intellectual Property Policy

OVERVIEW

SCOPE AND APPLICATION

POLICY PRINCIPLES

1. Ownership
2. Open Access and Commercialisation
3. Obligations of the University community
4. Rewarding Originators
5. Traditional Indigenous Knowledge
6. Moral Rights

AUTHORITIES

PROCEDURES

1. Identifying and Developing IP
2. Rewarding Originators
3. Students
4. Titleholders and Visitors
5. Resolution of Disagreements

DEFINITIONS

OVERVIEW

As a leader in research and innovation, existing in an environment that promotes open access to and dissemination of knowledge, the University encourages its staff and students to share their findings. This has a broad benefit for society, while providing valuable recognition for the University.

Where it has potential value, the University may capture and harness the value of its intellectual property (IP), providing appropriate incentives and rewards for the originators. In doing so, the University has the dual aims of recognising creative contributions, and securing the interests of the University.

This Policy aims to encourage originators of IP to be active participants in the systemic exchange and application of research findings and outcomes; to leverage the strengths of all parties, internal and external; and to ensure IP access and ownership arrangements are clear, fair and work to deliver optimal impact. This Policy supports the principles relating to the management of IP that are embodied in the [Australian Code for the Responsible Conduct of Research](#), and the [National Principles of Intellectual Property Management for Publicly Funded Research](#). It also supports the University's strategic objectives, including fostering a culture that values and encourages knowledge transfer, and lifting end-user utilisation and commercialisation of the University's research.

SCOPE AND APPLICATION

This Policy applies to all staff members, students, titleholders and visitors of the University of Adelaide. It addresses the creation, ownership, utilisation, commercialisation and sharing of IP developed within the University, whether relating to education, teaching, research or administration, acknowledging University Council responsibilities in Section 9 of the [University of Adelaide Act 1971](#), and its utilisation. This version of the Policy applies to any IP created on or after the date on which this Policy was approved.

This Policy does not apply to the University of Adelaide brand or other representations that identify the University, including its official titles ('The University of Adelaide' and 'Adelaide University'), the University logo, trademarks, slogans, business names and domain names, which are covered under the [Brand Policy](#).

Refer to the [Copyright Compliance Policy](#) for details on the University's position on the use of material owned by third parties and associated copyright compliance requirements.

POLICY PRINCIPLES

Ownership

1. The University is entitled to, and asserts ownership of, all IP developed, created authored or otherwise contributed to by staff members in the course of their employment with the University, unless there is a specific written agreement to the contrary.
2. Students own IP created in the course of their studies, except when a student elects to participate in a project that:
 - a. builds upon [pre-existing University IP](#); or
 - b. is being carried out for, or in conjunction with, an external third party (e.g. a Co-operative Research Centre, a company, etc.), whether under a separate formal agreement or not.
3. In cases where Principle 2 (a) and/or (b) apply, the University is entitled to, and asserts ownership of, the IP (in order to protect interests relating to University IP or obligations to third parties). The student will have the same rights and responsibilities as a University staff member in relation to that IP (as set out in Procedures 1 and 2), including entitlement to a share in [Net Revenue](#) received by the University. This principle is subject to any other agreement in writing between the University and the student or their employing organisation (if any).
4. Unless otherwise agreed in writing with the titleholder or visitor, or their respective employing organisation, the University is entitled to, and asserts ownership of, IP created by titleholders and visitors where the IP was generated solely or primarily through the use of [University resources](#) or [Pre-existing University IP](#). Titleholders and visitors will have the same rights and responsibilities as a University staff member in relation to that IP (as set out in Procedures 1 and 2), including entitlement to a share in [Net Revenue](#) received by the University.
5. All those engaging in collaborative research with a person or organisation external to the University must ensure that appropriate, agreed arrangements are in place prior to the commencement of such research, with respect to any delineation of IP ownership, sharing of financial benefit, use and Commercialisation.
6. The University does not assert ownership over the IP in [Scholarly or Creative works](#), unless:
 - a. the Originator has been engaged specifically by the University to create such work; or
 - b. the relevant work is subject to an overriding contractual obligation between the University and a third party; or
 - c. the relevant work relates to IP which is being [Commercialised](#).
7. Where the University does not assert ownership, it is entitled to a free, irrevocable, ongoing, non-exclusive right to use the relevant work for the University's teaching, research and promotional purposes.

Open Access and [Commercialisation](#)

8. University IP can be [Commercialised](#) or used in various ways that will benefit the University, Originators and the community, depending on the nature of the IP and its potential application. In many cases, this may be by means of providing open access to the work, which is a key feature of research, teaching and publications. In some cases, it may be more desirable for the University to protect the IP where a secured monopoly is required to achieve the best commercial outcome, or other application of research findings or outcomes.
9. In situations where the University no longer requires or does not seek IP protection for [Commercial Purposes](#), the University may assign the IP to the Originator(s) upon receipt of a request and upon such terms and conditions as may be agreed, or may open up that IP to other users through the public domain, via open access or publication, or may abandon any associated patent application, or retain it in commercial confidence, as the University sees fit.

Obligations of the University community

10. The University reserves the right to protect commercially significant IP and derive an income from it (as set out in Procedure 1). In such cases, the [Originators](#) will be appropriately recognised as contributors to that IP (as set out in Procedure 2). Any staff member, titleholder or visitor intending to use IP generated outside the course of their employment or involvement with the University (e.g. IP generated in the course of employment with a different employer), must notify their line manager and Adelaide Enterprise so the University can ensure the necessary rights of use are obtained from, and ownership is confirmed by, the IP owner.
11. Staff and students have an obligation to disclose the creation of new IP with potential commercial value or where required by third party agreements to Adelaide Enterprise or, where appropriate, to Research Services.

Rewarding Originators

12. All University IP Originators are entitled to a share of any [Net Revenue](#) that the University derives from its [Commercialisation](#) of the IP created by the [Originators](#), as set out in Procedure 2 of this Policy, except in the following circumstances:
 - a) The sharing of [Net Revenue](#) with staff members does not apply to any use or Commercialisation of [administrative](#) or [teaching materials](#), unless otherwise agreed.
 - b) [Net Revenue](#) derived from [Plant Breeders' Rights](#) (PBR) for varieties with a PBR Part 1 acceptance date after 23 July 2012 is excluded from this Policy. The entirety of such revenue is distributed to the School of Agriculture, Food and Wine for reinvestment in plant breeding.

Traditional Indigenous Knowledge

13. The University recognises that the commercial development of products resulting from use of the traditional knowledge of Indigenous peoples should be subject to benefit-sharing negotiations with the providers of such knowledge, and conform to the relevant Indigenous protocols and ethical guidelines (including the [Guidelines for Ethical Research in Australian Indigenous Studies](#)).

Moral Rights

14. The University recognises and respects the [Moral Rights](#) of staff members, students, titleholders and visitors, and will use its best endeavours to ensure that those Moral Rights are respected by any third party under contract with the University. In the case of [Administrative](#) or [Teaching](#) material created by staff members, titleholders or visitors on behalf of the University, those authors consent to the University using or modifying such materials as the University sees fit.

AUTHORITIES

Key	Authority Category	Authority	Delegation Holder	Limits
Research	Intellectual Property	Approval to waive or modify the application of this Policy.	VC&P	
Research	Intellectual Property	Authority to approve the purchase of shares, and commit to capital investments in return for equity, in spinout companies or other entities involved with the commercialisation of University intellectual property.	VC&P	Within financial delegations. A major strategic initiative or a significant commercial activity. Instances where the University is to acquire control of an entity.
Research	Intellectual Property	Sign documents for, and act on behalf of, the University in dealings pertaining to University owned IP, including divestment and licensing, and acquisition of IP owned by a third party.	Provost and DVC&VP(R)	Separate arrangements exist for CRC agreements. Excludes IP covered under the Brand Policy.

Key	Authority Category	Authority	Delegation Holder	Limits
Research	Intellectual Property	Sign documents for, and act on behalf of, the University in dealings pertaining to University owned IP, including divestment and licensing, and acquisition of IP owned by a third party.	Director, Adelaide Enterprise	Up to an estimated lifetime value of \$2.0M. Excludes IP covered under the Brand Policy.
Research	Intellectual Property	Approval of confidentiality agreements and material transfer agreements pertaining to IP.	Provost and DVC&VP(R); Director, Adelaide Enterprise	
Research	Intellectual Property	Approval of confidentiality agreements and material transfer agreements relating to IP.	Commercial Managers, Adelaide Enterprise	Up to \$150K
Research	Intellectual Property	Where it has been decided not to protect or develop the disclosed IP, consider requests for assignment from the University to the Originator(s), taking into account the related recommendation of the Director, Adelaide Enterprise.	Provost and DVC&VP(R)	
Research	Intellectual Property	Approval for staff to use, in subsequent employment, teaching materials created while employed at the University.	Head of School / Branch Director	

Note: These Authorities exist in addition to those in the [Research Grants, Contracts and Consultancies Policy](#) relating to the signing of agreements pertaining to competitive research grants, contract research and consultancies.

PROCEDURES

1. Identifying and Developing IP

Responsibility: All staff, students, titleholders and visitors

- a) Promptly disclose the creation of any University IP with Commercial potential to Adelaide Enterprise, using the Invention Disclosure Form, and observe the related requirements of the [Research Grants, Contracts and Consultancies Policy](#), particularly in regard to [Embedded Licenses](#). Disclosure of copyright in Scholarly or Creative Works is only required in instances of commercial relevance, where confidentiality in respect of the work is necessary to preserve the value of related IP.
- b) In the case of University IP with potential for [Commercialisation](#) (as determined by the Director, Adelaide Enterprise), or which is subject to obligations to another party, keep that IP confidential and ensure it is assessed and appropriately handled and protected before it is published or publicly disclosed.
- c) Retain sufficient records, materials and data to demonstrate the outcomes of any research, and to defend those outcomes if challenged.
- d) In accordance with Principle 10, if proposing to use IP generated in the course of previous employment with another employer, ensure prior disclosure to your line manager or Head of School or Branch. If this IP is intended to be used in any [Commercial Purpose](#), then also disclose it to Adelaide Enterprise or Research Services as appropriate.
- e) At the request of the University:
 - (i) execute, in a timely manner, all such confirmation of assignment and ownership, patent documentation and other documentation necessary to give effect to the IP ownership and use provisions set out in this Policy; and
 - (ii) provide other assistance as reasonably requested, such as evidence of date of creation, assisting with IP prosecution enforcement, promotion and [Commercialisation](#) of IP.

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- f) Where the Originator is in a position of influence with the party that will [Commercialise](#) the IP, or has a financial interest, comply with the Conflicts of Interests Procedure in the [Behaviour and Conduct Policy](#), and develop a conflict management plan.

Responsibility: Director, Adelaide Enterprise

- g) Following receipt of an IP disclosure, and giving regard to the Policy Principles, evaluate whether to proceed with protection and/or [Commercialisation](#) of that IP, and provide preliminary advice on the disclosure within 3 months. Adelaide Enterprise may seek external advice in performing this evaluation, and will inform the Originator(s) as soon as possible of the outcome. In performing this evaluation, Adelaide Enterprise will advise on the consequences of any disclosure under Procedure 1(d) of IP generated in the course of previous employment (including any licence or assignment needs).
- h) If a decision is made by Adelaide Enterprise to protect and/or [Commercialise](#) the IP, determine and implement the best method to do this on a case-by-case basis, and in consultation with the Originator(s) of that IP.
- i) Keep Heads of Schools/Branches and Executive Deans/Division Heads informed of IP [Commercialisation](#) proposals in their area, and subsequent progress.
- j) Where a decision is made to register the IP, pay relevant [Commercialisation costs](#) until such time as it is determined to cease expenditure.
- k) If a decision is made by Adelaide Enterprise not to protect or [Commercialise](#) the disclosed IP, inform the Originator(s), who may then apply to Adelaide Enterprise to do so in their own right. Prompt consideration will be given to any such application and the implications of any assignment for the University, including particular regard to any pre-existing or likely internal needs, benefit to the broad research community through abandonment of any IP protection and public disclosure, or commitments to third parties, and reserving the right not to assign. A recommendation will be made to the Provost and DVC&VP(R) who will consider the request. If the request for assignment to an Originator(s) is approved, a written agreement must be entered into between the Originator(s) and the University, addressing IP assignment and rights of use, costs and risks of [Commercialisation](#), and revenue distribution.
- l) Unless otherwise determined by the Provost and DVC&VP(R), negotiate and execute agreements with third parties in relation to University IP.
- m) Provide education on IP matters to the University community.

Responsibility: Executive Director, Research Services

- n) Where an external party seeks to negotiate license terms to access IP for a [Commercial Purpose](#) in a competitive research grant, research contract or research consultancy, consult with Adelaide Enterprise over the appropriate commercial terms of that license.

Responsibility: Provost and DVC&VP(R)

- o) Where it has been decided not to protect or [Commercialise](#) the disclosed IP, as per Procedure 1(k), consider requests for the University to assign the IP to the Originator(s), taking into account the recommendation of the Director, Adelaide Enterprise.

Responsibility: Heads of School/Branch Directors

- p) Consider requests from staff to:
- (i) use [Pre-existing IP](#) disclosed under procedure 1(d); or
 - (ii) use [Teaching Materials](#) in any subsequent employment.

2. Rewarding Originators

Responsibility: Director, Adelaide Enterprise

- a) Subject to any specific agreement or exceptions in this Policy, including where the Originator holds equity in the Company that has generated the revenue, distribute any [Net Revenue](#) in the following proportions:
- i. one-third to the Originator. If there is more than one Originator, the proportion will be shared equally among all Originators, unless there is a written agreement between them stipulating a different split;
 - ii. one-third to the Originator's School or administrative unit for strategic investment in research, as agreed by the Executive Dean of the relevant Faculty; and

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- iii. one-third to the Provost and DVC&VP(R) for strategic investment in research.

This distribution will continue regardless of whether the Originator(s) remains employed by, or are students of, the University. If there is any significant restructure affecting the existence or composition of the Originator's School or administrative unit, then the Provost and DVC&VP(R) will determine how that portion of the funding will be allocated.

Responsibility: Originator(s)

- a) Keep Adelaide Enterprise informed of current contact details.
- b) Within 60 days of being provided by the University with a description of distributions to be paid, provide the University an invoice for payment.
- c) Provide in writing to Adelaide Enterprise any change to the beneficiary.

Responsibility: Vice-Chancellor and President

- d) Consider requests for the University to take minority equity interest in companies that have licensed in University IP, taking into account:
 - i. the recommendation of the Provost and DVC&VP(R); and
 - ii. the requirements of the University of Adelaide Act 1971, Section 9 relating to wholly-owned entities controlled by the University, and/or significant commercial activities.

3. Students

Responsibility: Director, Adelaide Enterprise, and Executive Director, Research Services

- a) Where IP is embodied in a student thesis (or confidential appendices to it), work with the Adelaide Graduate Centre to ensure that any confidentiality or embargo requirements are limited to no longer than 12 months, except where this is prevented by the circumstances of protection, [Commercialisation](#) or obligations to a third party.

4. Titleholders and Visitors

Responsibility: All titleholders and visitors

- a) Disclose to Adelaide Enterprise and the relevant Head of School any IP with commercial potential that they create in the course of their role with the University.
- b) Retain sufficient records, materials and data to justify the outcomes of any research, and to defend those outcomes if challenged.

Responsibility: Staff and Heads of School

- c) Consult with Adelaide Enterprise on appropriate arrangements and agreements where titleholders or visitors are to be engaged on a project:
 - i. where the IP is likely to have or has commercial potential;
 - ii. which builds upon Pre-existing University IP or which is funded by the University; or
 - iii. that is being carried out by the University for, or in conjunction with, a third party.

Responsibility: Heads of School

- d) To ensure that all titleholders and visitors working in their School have accepted the terms of this Policy.

Responsibility: Director, Adelaide Enterprise

- e) Assist Heads of School in case-by-case negotiations on the [Commercialisation](#) of IP created by titleholders or visitors over which the University asserts ownership, and an equitable sharing of any [Net Revenue](#) from the [Commercialisation](#) of that IP. Negotiations will include the employer of the titleholder or visitor.

5. Resolution of Disagreements

Where a disagreement arises concerning any IP-related matter associated with this Policy (including but not limited to matters of inventorship or share of ownership), it should be referred to the Director, Adelaide Enterprise, who will notify the Provost and DVC&VP(R) and work with the parties in dispute to attempt to find a mutually acceptable solution. If the IP-related matter is not resolved within 3 months of its reference to the Director, Adelaide Enterprise, then the Provost and DVC&VP(R) will appoint an appropriate expert to

determine a resolution. The expert must act as an expert and not as an arbitrator, and the determination of the expert will be final and binding as between the parties.

Nothing in this Policy affects any available options for general legal redress, for staff to raise a staff grievance under the *University of Adelaide Enterprise Agreement* (as amended or replaced), or for students to use the University's Student Grievance Resolution Process.

DEFINITIONS

'Adelaide Enterprise' refers to an administrative unit of the University of Adelaide responsible for the management of the University's Intellectual Property portfolio and related matters.

'Administrative materials' are those items created for the administrative or business functions of the University. These include, but are not limited to, letters, memos, templates, handbooks, systems software, advertising material and internal reports.

'Commercialisation' means any process to transfer technology, sell, assign, license, sub-license, or otherwise trade in or deal with IP to gain or attempt to gain financial or other benefit, and 'Commercialise' and 'Commercialising' have corresponding meanings.

'Commercial Purpose' means the use or application of Intellectual Property for profit whether monetary or otherwise.

'Commercialisation costs' means all costs relating to commercialisation of IP (excluding the costs of employing University staff). It includes the costs of managing, registering, protecting and enforcing IP rights, creation of prototypes, models and samples, proof of concept development, insurance, legal, financial and technical advice, marketing and travel, and other such expenses associated with carrying out that business activity.

'Embedded License' means any obligation, whether contractually agreed or as an option to negotiate, that gives an external party to an agreement preferential rights to Intellectual Property developed under that agreement or as background to that agreement.

'Intellectual property' ('IP') means the legal rights which may be claimed for certain intellectual creations. Specifically, it includes:

- Copyright, which protects computer software; teaching materials; scholarly written, artistic, dramatic and musical works; and other works including film and sound recordings. Refer to the *Copyright Act 1968 (Cth)*;
- Patents, which protect new inventions and processes in areas such as software, biotechnological and engineering advances, and business methods. Refer to the *Patents Act 1990 (Cth)*;
- Confidential information, consisting of know-how, trade secrets or other proprietary information and background knowledge. This is protected under Common Law;
- Plant breeder's rights to protect distinct, uniform and stable new plant varieties that have been bred. Refer to the *Plant Breeder's Rights Act 1994 (Cth)*;
- Design Rights to protect the shape or appearance of manufactured goods. Refer to the *Designs Act 2003 (Cth)*;
- Trademarks comprising the signs and trading identities of businesses. See the *Trade Marks Act 1995 (Cth)* for registered marks. Unregistered trademarks are protected under Common Law; and
- Circuit Layout Rights to protect the configuration of electronic circuits in integrated circuit products or layout designs. Refer to the *Circuit Layouts Act 1989 (Cth)*.

'Moral Rights' are those personal rights conferred by Part IX of the *Copyright Act 1968 (Cth)* in relation to literary, dramatic, musical or artistic works and cinematograph films. These are rights for originators to be attributed as the originator of their work; take action if their work is falsely attributed as being someone else's work or is altered by someone else but attributed as if it were unaltered; and/or take action if their work is distorted or treated in a way that is prejudicial to their honour or reputation.

'Net Revenue' means cash revenue from [Commercialisation](#) of IP (including royalties, licence fees, lump sums, milestone payments and revenue from sale of shares) less [Commercialisation costs](#), but before tax.

‘Originator’ means the inventor, breeder, author, composer, sculptor, designer, compiler, film-maker, programmer, photographer or any other person who creates in any way IP which is the subject of this Policy.

‘Plant Breeder’s Rights’ are exclusive commercial rights to a registered plant variety administered under the *Plant Breeder’s Rights Act 1994*.

‘Pre-existing University IP’ means IP, other than Teaching Materials, created prior to or independently of a particular university research project or course of study.

‘Scholarly or Creative work’ means journal articles, conference papers and proceedings, books, recorded performances, radio scripts, as well as artistic, musical, dramatic or other creative works produced during the course of a staff member’s employment. For the purposes of this Policy it does not include work that is a computer program, teaching materials or administrative material.

‘Teaching materials’ are materials in any form prepared for the teaching of a course or program that is offered or intended to be offered by the University. They include curriculum outlines, lectures, lecture notes and material, syllabi, study guides, assessment materials, images, web content, course software, etc.

‘Titleholder’ means a person who is not a member of academic staff and has been awarded a title by the University of Adelaide under the [Conferral of Honorary Roles Procedure](#).

‘University Resources’ includes, but is not limited to Pre-existing University IP, premises, facilities, funds, services, equipment and staff time.

RMO File No.	F.2016/5688
Policy Custodian	Provost and Deputy Vice-Chancellor and Vice-President (Research)
Responsible Policy officer	Provost and Deputy Vice-Chancellor and Vice-President (Research)
Endorsed by	Vice-Chancellor’s Executive on 9 May 2018
Approved by	Council on 28 May 2018
Related Documents and Policies	Australian Code for the Responsible Conduct of Research Behaviour and Conduct Policy Brand Policy Copyright Compliance Policy Guidelines for Ethical Research in Australian Indigenous Studies Legal Compliance Framework National Principles of Intellectual Property Management for Publicly Funded Research Research Grants, Contracts and Consultancies Policy Responsible Conduct of Research Policy University of Adelaide Enterprise Agreement (as amended or replaced)
Related Legislation	Copyright Act 1968 (Cth) Patents Act 1990 (Cth) Plant Breeder’s Rights Act 1994 (Cth) Designs Act 2003 (Cth) Trade Marks Act 1995 (Cth) Circuit Layouts Act 1989 (Cth)
Superseded Policies	Intellectual Property Policy (2012)
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